IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.373 OF 2001

Nitin Vishnu Sadamat)
Age : 28 years, Occ.: Student)
residing at Ganeshnagar, Bopodi)
Pune 411 003)
(Presently in Central Prison)
Yerawada, Pune.)).. APPELLANT
)(Org.Accused
No.1)

VERSUS

State of Maharashtra).. RESPONDENT

Mr.B.G.Vaidya, Advocate for the Appellant Accused.

Smt.V.R.Bhonsale, Additional Public Prosecutor,
for the Respondent State.

**CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.**

DATED: 19TH APRIL 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. The conviction and sentence under Sections 302 and 307 of the Indian Penal Code has been impugned in this Appeal. While the Appellant was found guilty of these charges, Accused No.2, the brother of the Appellant, was acquitted.

2. The prosecution case is based on an incident which occurred on 5th June 1999 at about 9.30 p.m. near the Takre Samaj Temple at Ganeshnagar, Bopadi near the

Mumbai-Pune Highway. The complainant who is PW10 and the brother of the victim Sandeep heard that his brother-in-law Ajay Gaikwad, PW6, had an altercation at the Jairam Carrom House with some persons present there. After having dinner with his parents and brothers Pramod PW5 and Sandeep the victim, the complainant, as was his usual practice, went to his father-in-law's residence which was closeby and sat chatting with his brothers and PW6 just outside his father-in-law's house. Accused No.2 Sandeep arrived there and had a heated exchange of words with PW6. The Appellant reached the spot soon thereafter and inflicted a knife blow in the armpit of Ajay Gaikwad. The complainant rushed to the spot on seeing this and held the blade of the knife with his left hand in order to prevent the Appellant from inflicting any more blows. The Appellant managed to free the knife and stabbed the complainant in his stomach. On seeing this, PW5 Pramod and Sandeep, the victim, tried to intervene. Pramod was stabbed in the chest by Accused No.1. The Appellant then inflicted stab wounds with the knife on the left side of Sandeep's chest. Sandeep collapsed. The Appellant and his brother ran away from the spot. The injured PW5, PW6 and PW10 were removed to the hospital and the victim was declared dead on being taken to Sassoon Hospital. On the complaint of PW10 being recorded in the hospital, an offence was registered under Sections 302, 307 read with

Section 34 against the Appellant and his brother Sandeep. The case was tried in the Sessions Court, Pune. Sandeep was acquitted while the Appellant was convicted under Sections 302 and 307. It is this judgment which is impugned in the present Appeal.

3. We have scrutinised the evidence led before the learned Sessions Judge and on reappraising the same, we find that the conviction of the Appellant under Section 302 must be set aside. We find that the offence which the Appellant has committed is punishable under Section 304 Part II. While confirming the judgment of the Sessions Court that the Appellant has committed the offence under Section 307, we are of the view that the conviction under Section 302 must be set aside and instead the Appellant should be punished under Section 304 Part II for the following reasons.

4. It has been established by the prosecution that the incident occurred on account of an altercation between PW6 and the brother of the Appellant. In fact, PW6 and his father had complained to the mother of the Appellant about the behaviour of the Appellant's brother. Enraged by this, the Appellant's brother had accosted PW6 and a heated argument had ensued between them. The prosecution has also established that at the same time the mother of the Appellant was continuously

abusing PW6. The Appellant on hearing the altercation and his mother's abuses, reached the spot with a knife in his hand and inflicted stab wounds on Ajay PW6. He then indiscriminately started stabbing whoever tried to intervene. PW5 and PW10 as well as the victim received stab injuries on account of this behaviour of the Appellant. However, a perusal of the post mortem report and the evidence of PW1 who conducted the post mortem, indicates that the victim had sustained eleven external injuries and three internal injuries. The Doctor has opined that the following injuries Nos.6 and 7 were sufficient to cause death individually and together:-

> "6. Stab injury over left 5th intercostal space 10 cm away from ventral midline, measuring 2.5 x 1 cm. opening into chest cavity going downwards medially backwards.
>
> 7. Stab injury over left chest, over anterior axillary region, 6 cm. above costal margin, measuring 2 x 1 cm., opening into chest cavity, upper angle of wound clean cut; while margins and lower angle abraded."

All the prosecution witnesses have stated that the Appellant inflicted only two stab wounds on the victim. It has, therefore, been submitted on behalf of the Appellant by Mr.Vaidya that the other injuries are unexplained and in all probability could have been inflicted by others who were present at the spot. He submits that the Appellant cannot in such circumstances

be held to have committed culpable homicide amounting to murder.

5. The evidence on record indicates that the injuries had been inflicted by the Appellant in the heat of the moment on account of the altercation between his brother and Ajay. The evidence also indicates that there was no intention to kill. PW13, who is an eye-witness to the incident and who has not sustained any injuries, has stated that the Appellant gave a knife blow on the chest and stomach of the victim. This evidence coupled with the fact that the other injuries sustained by the victim have not been explained by any of the witnesses would, in our opinion, indicate that the Appellant had inflicted the knife blows only on account of the passions rising. There was no premeditation in the behaviour of the Appellant and it could not be said that the Appellant had murdered the victim. The intention to kill being absent in the Appellant, we are of the opinion that the Appellant has committed a culpable homicide, not amounting to murder. In fact, the Doctor PW3 who examined the complainant as well as his brother and brother-in-law initially has stated that they were unable to name their assailants. However, they had stated that they suffered injuries on account of an assault by two or three persons. There

are several unexplained injuries on the victim's body. All these factors are indicative of the prosecution having failed to establish the charge of murder against the Appellant.

6. Mr.Vaidya assailed the impugned judgment also on the ground that the knife had been recovered on the third day of the incident at a distance from the spot of the offence. However, there is no doubt that the recovery has been made at the instance of the Appellant as detailed in the seizure panchanama at Exhibit 41.

7. In our opinion, therefore, the judgment of the Sessions Court is required to be set aside in so far as it convicts and sentences the Appellant under Section 302 IPC. Instead, the Appellant stands convicted under Section 304 Part II of the IPC and is sentenced to suffer rigorous imprisonment for seven years. However, the findings of the Sessions Court of commission of an offence under Section 307 are maintained. The Appellant is entitled to set off in according with law.

8. Appeal partly allowed.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)